ABE M. & GEORGE KALAF (D/B/A BUSRX, INC.)

IBLA 93-102 Decided November 3, 1995

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, affirming determination that oil and gas lease had terminated by operation of law. NM-13771.

Affirmed.

1. Oil and Gas Leases: Termination--Oil and Gas Leases: Well Capable of Production

Where (absent a suspension of operations or production) an oil and gas lessee fails to commence reworking or drilling operations on a well within 60 days after receipt of notice to do so from BLM and fails to demonstrate that there is any well on the leased land capable of production in paying quantities, BLM properly holds that the lease, in its extended term by reason of production, has terminated by operation of law.

APPEARANCES: Ernest L. Padilla, Esq., Santa Fe, New Mexico, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

Abe M. and George Kalaf (d/b/a BUSRx, Inc. (BRI)) have appealed from the November 5, 1992, decision of the New Mexico State Office, Bureau of Land Management (BLM), affirming the determination by the Farmington (New Mexico) Resource Area Office (FRA), BLM, that oil and gas lease NM-13771 had terminated by operation of law.

The lease in question was issued for 880 acres of Federal lands in Rio Arriba County, New Mexico, effective September 1, 1971, for a primary term of 10 years and "so long thereafter as oil or gas is produced in paying quantities," pursuant to section 17 of the Mineral Leasing Act, as amended. 30 U.S.C. § 226 (1988); see also 43 CFR 3110.3-1. The initial 10-year term of the lease expired on August 31, 1981, but was extended for an additional 2 years until August 31, 1983, and so long thereafter as oil or gas was produced in paying quantities. See 30 U.S.C. § 226(e) (1988); 43 CFR 3107.1.

After issuance, the entire record title interest in the lease passed by mesne assignments to the Kalafs, effective July 1, 1983. They in turn assigned that interest to BRI, effective November 1, 1983. Although BRI then assigned the interest to a third party, effective April 1, 1985, it eventually returned to the Kalafs, effective April 1, 1987, and was thereafter held by them. 1/

The Cido No. 2 well was spudded on May 30, 1983, drilled to a total depth of 2,875 feet through the target (Sanastee) formation by June 15, 1983, and completed on August 30, 1983. On that date, 4 barrels (BBL) of oil were bailed from the well at a depth of from 1,600 to 1,850 feet in the Upper Mancos formation. The well was allowed to recharge, and on October 4, 1983, an additional 8 BBLs of oil were bailed from the well. Subsequent efforts to obtain production (including swabbing and acid fracturing) during the succeeding 8 days yielded only water. The well was tested during a 21-hour period between October 25 and 26, 1983, and produced (by means of swabbing) a total of 2.58 BBLs of oil, at a depth of from 2,100 to 2,500 feet in the Middle Mancos formation. Such production translated to 2.95 barrels of oil per day (BOPD). The well was then shut in. Production resumed at the rate of 0.30 BOPD and continued sporadically until October 1987, when the well was again shut in.

The Seville-Trident No. 1 well was spudded on the lease on August 19, 1985, drilled to a total depth of 2,660 feet, and completed on August 21, 1985. By letter dated October 22, 1987, the Kalafs reported that no production had been obtained from that well, that no reworking operations had been undertaken, and that the well had been temporarily abandoned pending a decision whether to drill to a greater depth (SOR Exh. 4). No production ever occurred, and the well was eventually plugged and abandoned.

Three other wells (Cido Nos. 1 and 3 and Rio Arriba No. 1) were drilled on the leased land. However, they never produced and were eventually plugged and abandoned.

By notice dated April 20, 1989, the FRA required BRI, as the designated operator, to demonstrate that the Cido No. 2 well was capable of production in paying quantities within 60 days of receipt of the notice, or the lease would be considered to have terminated by operation of law effective October 31, 1987, the last day of the month in which production from the Cido No. 2 well had ceased. The FRA further stated that, if BRI did not consider the well capable of paying production, it should be plugged and abandoned.

1/ The record indicates that the Kalafs sought on Aug. 31, 1989, to obtain BLM's approval of the assignment of record title to BRI, and then from BRI to the Hebco Oil Company. The State Office declined to approve those assignments on Nov. 30, 1989, and reaffirmed that action on July 2, 1990.

BRI responded on May 18, 1989, noting that the Cido No. 2 was "capable of producing only 3 barrels of oil per month," and indicating that it would likely "abandon and plug the well." BRI submitted a proposed plan for plugging the well, which was approved by BLM on June 5, 1989. The FRA subsequently required BRI to plug the well (as well as the Seville-Trident No. 1 well) by letters issued on October 5 and November 9, 1989.

By decision dated November 7, 1989, issued to the Kalafs, the State Office held that the lease had terminated by operation of law effective October 31, 1987, as there had been no production since that month and no other activity that would extend the lease. In so holding, the State Office agreed with a July 10, 1989, recommendation by the FRA, which referenced its April 1989 60-day notice. On December 5, 1989, the Kalafs objected, asserting that the Cido No. 2 well was capable of production in paying quantities. The FRA recommended, by memorandum dated March 2, 1990, that the lease remain terminated, as BRI's May 1989 letter had shown that the well was not capable of paying production, and the State Office concurred in a letter dated March 15, 1990.

On April 4, 1990, the FRA again ordered BRI, in view of the lease termination, to plug and abandon both the Seville-Trident No. 1 and Cido No. 2 wells. BRI challenged the order, agreeing to plug and abandon the Seville-Trident No. 1 well, but contending that the Cido No. 2 well was still capable of production in paying quantities. 2/ BRI stated that it could produce from 0.30 to 0.40 BOPD, which (it submitted) was sufficient to yield a profit after payment of operating costs. BRI stated further that it had plans to recondition the well in order to stimulate more production.

In a July 2, 1990, decision, the State Office concluded that BRI had failed to demonstrate that the Cido No. 2 well was capable of production in paying quantities. Nonetheless, it reinstated the lease and afforded BRI 30 days from receipt of the decision to submit, for the FRA's approval, either evidence that the well was capable of such production or a plan to recondition the well. 3/ Reconditioning operations were to commence within a reasonable period of time, as agreed by BRI and the FRA, and the FRA would determine whether the well was capable of paying production, based on a test of the well witnessed by the FRA. If the well was found not capable of paying production or BRI did not comply with the July 1990 decision, the

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2/ The FRA's April 1990 order to plug and abandon the Seville-Trident No. 1 well was affirmed by the State Office on July 2, 1990. BRI later plugged and abandoned the well. There is no question here whether that well is or ever was capable of production in paying quantities.

3/ The lease was formally reinstated, effective Oct. 31, 1987, by State Office decision, dated Sept. 30, 1990.

State Office stated that the lease would "terminate due to nonproduction" and the lessee would be "obligated to properly plug and abandon" the well. No appeal was taken from that decision.

The Cido No. 2 well was tested by the FRA from August 21 to September 18, 1990, producing a total of 17.54 BBLs of oil over a 28-day period, or 0.63 BOPD. These results were regarded by the FRA as "inconclusive" (FRA Nov. 26, 1990, Decision at 1).

On September 28, 1990, the FRA ordered BRI to plug the Cido No. 2 well. The FRA also recommended that the lease be terminated due to nonproduction, as a result of BRI's failure to comply with the State Office's July 1990 order to timely plug and abandon the Seville-Trident No. 1 well. BRI sought State Director Review of the FRA's September 1990 order, pursuant to 43 CFR 3165.3(b).

On November 26, 1990, the State Office effectively set aside the FRA's September 1990 order, remanding the case so that the FRA could determine whether the Cido No. 2 well was capable of production in paying quantities. The State Office deferred any action to terminate the lease "until definitive test results of the No. 2 Cido well" were obtained.

By letter dated December 5, 1990, the FRA notified BRI that it would have until July 1, 1991, to show that the Cido No. 2 well was capable of production in paying quantities. It accordingly required BRI to perform workover operations and conduct another production test. The FRA stated that, in the absence of an acceptable showing, the lease would be considered to have terminated effective October 31, 1987.

No test had been conducted by July 1, 1991. Therefore, by letter dated July 17, 1991, the FRA notified BRI that the lease was being recommended for termination and required BRI to plug the Cido No. 2 well within 30 days either of receipt of the order or of 7 days after mailing of the order, whichever was sooner.

By letter dated August 7, 1991, BRI informed the FRA that the well had already been shown to be capable of paying production (i.e., 0.5 BOPD). In any case, BRI sought an extension until September 5, 1991, to conduct another production test, stating that it intended to begin the test on August 14, 1991. The extension was evidently granted.

On September 15, 1991, BRI moved a rig onto the site of the Cido No. 2 well and began reworking operations. After repeated efforts, on October 11, 1991, BRI bailed 11.43 BBLs of oil from the well over a 5-hour period, at a depth of 2,580 feet in the Middle Mancos formation. Operations were halted when a 35-foot section of the well hole caved in.

On October 15, 1991, BRI sought another extension to deepen the hole, set cement, and perforate casing, "[i]f further bailing tests indicate a commercial well." The extension was granted. Efforts to reopen the well resumed, and an additional 4.76 BBLs of oil were bailed on October 30, 1991, before the well hole again caved in. The well was then shut in due to bad weather. No further operations were undertaken.

On June 16, 1992, the FRA granted BRI until August 20, 1992, to complete the reworking operations and perform the test required to demonstrate that the Cido No. 2 well was capable of paying production. In the absence of an acceptable showing, it stated that the FRA would consider the lease to have terminated by operation of law effective October 31, 1987. There is no evidence that BRI undertook another production test or submitted the results to the FRA before August 20, 1992. Rather, BRI sought an additional extension on August 20, 1992, in order to reopen the well to a depth of 2,625 feet in the Middle Mancos formation.

Noting that BRI had had "adequate time to complete the workover and retest the well," the FRA denied the extension request on September 3, 1992. He also recommended that the lease be terminated and required BRI, within 30 days either of receipt of the letter or of 7 days after mailing of the letter (whichever was earlier), to plug and abandon the Cido No. 2 well because BRI failed to demonstrate that it was capable of paying production by the August 20, 1992, deadline.

Asserting that the well was capable of production in paying quantities, BRI sought the State Director's review of the Area Manager's September 1992 letter. It summarized the evidence probative of productive capability during any year, using three different rates of production (0.74, 0.905, and 54.857 BOPD) over a 300-day period, a value of $17.42/BBL, and annual pumping ($1,599.96), maintenance ($89.46), and fuel ($0) costs. 4/ In each instance, it projected the well to yield a net profit.

4/ According to BRI, the production rate of 0.74 BOPD was based on the production test conducted by the FRA from Aug. 21 to Sept. 18, 1990; the rate of 0.905 BOPD was based on the reported production of 133 BBLs over a 147-day period between September 1989 and December 1991; and the rate of 54.857 BOPD was based on the reported recovery of 11.43 BBLs over a 5-hour period on Oct. 11, 1991 (Notice of Appeal, dated Oct. 2, 1992, at 2, 3, 4; Exhs. 3 and 7).

The value of a barrel of oil was determined using a price for oil of $19.56/BBL and deducting amounts charged for royalty paid to the United States (calculated using a reduced rate of 0.5%, as provided by 43 CFR 3103.4-1); taxes paid to the State (calculated using a rate of 6.895 percent); and overriding royalty paid to the royalty owners (calculated using a rate of 5 percent) (Notice of Appeal at 3; Exh. 6; Aug. 7, 1991, Letter to FRA at 2).

BRI asserted that, since the well produced enough natural gas to generate the needed power, no fuel needed to be purchased. Id. The record confirms that the well may produce small quantities of gas, which may be enough to provide the needed power (SOR at Exh. 5).

In its November 1992 decision, the State Office, after considering all of the evidence offered by BRI in support of its contention that the Cido No. 2 well is capable of production in paying quantities, concluded that it was not, and that the lease had terminated by operation of law. BRI appealed.

[1] Under the terms of Federal oil and gas leases and applicable provisions of section 17(e) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(e) (1988), and its implementing regulations (43 CFR 3107.2-1), holders of a lease in its extended term by reason of production are required to continue production in paying quantities in order to avoid termination of the lease. See, e.g., C & K Petroleum, Inc., 70 IBLA 354, 356 (1983).

Where a lease does not have a well capable of production in paying quantities, reworking or drilling operations (with the aim of returning the well to production or drilling another successful well) must commence within 60 days after receipt of notice that the lease is not capable of production in paying quantities. Reworking or drilling operations must be conducted thereafter with reasonable diligence during the period of nonproduction. See 30 U.S.C. § 226(i) (1988); 43 CFR 3107.2-2; Great Western Petroleum & Refining Co., 124 IBLA 16, 24 (1992); Great Plains Petroleum, Inc., 117 IBLA 130, 132 (1990). Where production ceases and there is no longer any well capable of production in paying quantities on the leased land, a lease will terminate by operation of law if reworking or drilling operations are not commenced within 60 days after receipt of notice that the lease is not capable of production in paying quantities and continued thereafter with reasonable diligence. See Samuel Gary Jr. & Associates, Inc., 125 IBLA 223, 225-26, 228 (1993); Daymon D. Gililland, 108 IBLA 144, 147 (1989), and cases cited.

Where, however, a lease has a well capable of production in paying quantities, production may temporarily cease, but it must resume within a period not less than 60 days after receipt of notice to do so and continue thereafter. See 30 U.S.C. § 226(i) (1988); 43 CFR 3107.2-3. In such circumstances, the lease expires by operation of law if production ceases and, thereafter, the lessee fails to produce the well upon 60 days' notice to place the well in production. See Great Western Petroleum & Refining Co., 124 IBLA at 24.

The initial question is whether the Cido No. 2 well was capable of "production in paying quantities." That phrase is defined as production sufficient to yield a reasonable profit after payment of all the day-to-day costs incurred after the initial drilling and equipping of the well, that is, the costs of operating the well, including workovers and maintenance, rendering the oil or gas marketable, and transporting and marketing that product. See Amoco Production Co., 101 IBLA 215, 221 (1988); Yates Petroleum Corp., 67 IBLA 246, 251, 254-55, 258, 89 I.D. 480, 483, 485, 487 (1982); John G. Swanson, 66 IBLA 200, 202 (1982); John Swanson, 51 IBLA 239, 242 (1980); Kerr-McGee Oil Industries, Inc., 73 I.D. 110, 116, 120 (1966); 3 Williams & Meyers, Oil & Gas Law §§ 604.6(a)-604.6(b) (1994) at 81-88. The question is whether, during the period of operation and production, revenues derived from the lease exceeded the costs, thus justifying its continued existence for the mutual benefit of the United States and the lessee.

Where a lease is in its extended term by reason of production, productive capability must be determined as of the time BLM finally determines that the well is not capable of production in paying quantities and holds the lease to have terminated by operation of law as a result. Where BLM has determined that a well is not so capable, the party challenging that determination bears the burden of proving, by a preponderance of the evidence, that it is not correct. See Woods Petroleum Co., 86 IBLA 46, 51 (1985); Impel Energy Corp., 71 IBLA 237, 240 (1983); John Swanson, 51 IBLA at 242.

Although the Cido No. 2 well was produced at various times following the end of the initial 10-year term of their lease and the subsequent 2-year extension, it never achieved sustained production over any length of time. In the 3-year period immediately prior to the FRA's September 3, 1992, decision, 56 BBLs were produced over 58 days (0.966 BOPD) from September 1989 through January 1990; 53 BBLs were produced over 50 days (1.06 BOPD) from August through December 1990; 24 BBLs were produced over 39 days (0.615 BOPD) from July through August 1991; and 16.19 BBLs were produced over 2 days (8.095 BOPD) in October 1991 (Notice of Appeal Exhs. 3, 4, and 7).

We find no fault with BLM's conclusion that the Cido No. 2 well was not capable of production in paying quantities. BLM properly discounted appellants' calculated rate of production of 54.857 BOPD, based on the production of 11.43 BBLs over a 5-hour period on October 11, 1991. We agree that "[t]o calculate production potential a well should have stabilized production for a reasonable period of time" and that "[o]il recovery during five hours of bailing is insufficient data for determining a well's productive potential" (Decision at 1). On October 20, 1991, the well was only able to produce 4.76 BBLs from the same depth. We agree that the October 11, 1991, production could not reliably be extrapolated to a daily rate of production. See Amoco Production Co., 101 IBLA at 220, 222; JSC Producers, 99 IBLA 164, 167, 167 n.2 (1987).

BLM also properly discounted appellants' calculated rate of production of 0.905 BOPD, based on production of 133 BBLs over 147 days from September 1989 through December 1991. The fact this rate was not based on a production test, but rather on monthly reports of production, diminishes it as a basis to extrapolate to a production rate. Although we know how many days in any given month there was production, we do not know how many days were spent attempting to achieve production without any success. Although 16 BBLs of oil were produced over 9 days during the month of October 1989, translating to a production rate of 1.78 BOPD (Notice of Appeal Exh. 7), we do not know whether attempts were made to achieve production over the remaining 22 days of the month. The actual rate could be as low as 0.52 BOPD. By the same token, total production of 133 BBLs over the course of 368 days could demonstrate a production rate as low as only 0.36 BOPD.

BLM also properly rejected appellants' conclusion that the production rate of 0.905 BOPD could be projected over 300 days. There is simply no evidence in the record that the well has ever had sustained production, and the evidence is to the contrary. As BLM notes, "[t]he results of a controlled production test witnessed by [the] FRA indicate that oil production declines rapidly when the well is produced after a substantial shut-in period" (Decision at 2). Appellants have provided no other evidence that the well is capable of anything more than intermittent production.

BLM noted that, during the 3 years from September 1989 through August 1991, BRI had sold 125.71 BBLs of oil at a price of $19.56/BBL, generating a total income of $2,458.89. 5/ It calculated that, with State severance taxes of $169.55, private overriding royalty of $122.94, and Federal minimum royalty of $2,640, the net result was a loss of $473.60. BLM therefore concluded that, "[w]hen additional normal operational expenses are added, the lease [was] clearly uneconomical."

State taxes and all Federal royalties are properly considered in determining whether the well was capable of paying production. See Reese Enterprises, Inc. v. Lawson, 553 P.2d 885, 898 (Kan. 1976); Morgan v. Fox, 536 S.W.2d 644, 650, 650-51 (Tex. Civ. App. 1976). The record shows that appellants paid State severance taxes on the sale of 125.71 BBLs of oil in May 1991; private overriding royalty ($122.94) on the basis of 5 percent of the total amount received in the May 1991 sale ($2,458.89); and a Federal production royalty ($307.36) on the basis of 12-1/2 percent of the total amount received in the May 1991 sale ($2,458.89) (Notice of Appeal at Exh. 6). Appellants also paid minimum royalty of $1 per acre per year, totalling $2,640 for the 3 calendar years from 1989-91 following the discovery of oil or gas in paying quantities, as required by 30 U.S.C. § 226(d) (1988), 43 CFR 3103.3-2(a), and Sec. 2(d)(1) of their lease.

Giving credit for 133 BBLs of production at a price of $19.56/BBL results in the recovery of $2,601.48, which is not enough to cover taxes and royalties totalling $2,932.49. Further, appellants and BLM agree that pumping costs for a well would be $133.33 per month, or $4.44 additional

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5/ BRI indicated on Aug. 7, 1991, that it had sold 125.71 BBLs of oil in that time period. It later stated that 127 BBLs were actually sold (Notice of Appeal, Exh. 7). The record indicates that appellants produced 133 BBLs of oil in the 3-year period. These small differences do not change the net profit/loss calculation.

per day (Notice of Appeal at 3; Attachments to Routing and Transmittal Slip to State Office from FRA, dated Oct. 6, 1992, at 1). This adds a cost of $652.68 to pump the 133 BBLs over 147 days. In addition, BLM posits maintenance costs of $300 per month, which amount to $1,470 over 147 days.

Appellants' actual experience to date, as shown in the record, has not established that the well can produce at a net profit. Rather, it is clear that they rely on expected future production. However, in determining whether a well is capable of paying production at the present time, it is not permissible to consider future expectations as to the well. John Swanson, 51 IBLA at 242. A well will not be considered capable of paying production as a present fact where, although there may be paying production still to be had, the well is not "actually in a condition to produce." Amoco Production Co., 101 IBLA at 221 (quoting from United Manufacturing Co., 65 I.D. 106, 113 (1958)). A well from which production may be achieved only as a result of further drilling and/or reworking operations cannot be considered "in a condition to produce." See Amoco Production Co., 101 IBLA at 217-18, 222.

Appellants' last experience in attempting to produce oil from the well prior to the FRA's September 3, 1992, decision demonstrates that it is not physically capable of paying production at the present time. The last production taken from the well in October 1991 (16.19 BBLs) only occurred after considerable efforts, involving repeated drilling and other reworking operations, over the course of 29 days between September 15 and October 31, 1991 (Notice of Appeal, Exhs. 2-4). We conclude that any further production could occur only after additional drilling and bailing.

Therefore, we conclude that appellants have failed to rebut, by a preponderance of the evidence, BLM's determination that the Cido No. 2 well is not capable of production in paying quantities.

Absent a demonstration of productive capability, appellants had the option following receipt of the State Office's July 1990 decision to commence reworking or drilling operations within a reasonable period of time and to pursue them thereafter with reasonable diligence, as that decision expressly stated. 30 U.S.C. § 226(i) (1988); 43 CFR 3107.2-2. In response, appellants arguably attempted to comply, as evidenced by the fact that it obtained some production from the well in the 5 months immediately following receipt of the State Office's July 1990 decision (Notice of Appeal, Exh. 7). However, production was very sporadic, ceasing after December 1990, resuming again in July 1991, and continuing thereafter until October 30, 1991, when efforts to establish production once again ceased (Notice of Appeal Exhs. 3, 4, and 7).

FRA's June 1992 letter, which informed appellants that it still regarded the lease as not capable of production in paying quantities, then served as the final notice to that effect, required by 43 CFR 3107.2-2. 6/ Therefore, appellants had until August 20, 1992, i.e., 60 days from receipt of the letter, to again commence reworking or drilling operations and continue them thereafter with reasonable diligence. There is no evidence that such operations were undertaken in response to this letter, and appellants admit that they were not (SOR at 6).

Accordingly, in the absence of the commencement of reworking or drilling operations within 60 days after receipt of notice from BLM, the FRA, in its September 3, 1992, decision (as affirmed by the State Office on November 5, 1992), properly deemed appellants' lease to have terminated by operation of law and required them to plug and abandon the Cido No. 2 well. See, e.g., Samuel Gary Jr. & Associates, Inc., 125 IBLA at 228; Daymon D. Gililland, 108 IBLA at 147; John G. Swanson, 66 IBLA at 202.

Appellants assert that they were unable to continue reworking or drilling operations from October 1991 until August 1992 because the special stipulations inserted in the lease at the request of the Forest Service, U.S. Department of Agriculture "as a practical matter" precluded access to the Cido No. 2 well during the winter (SOR at 5). Appellants point to no particular stipulation, and we find none (SOR, Exh. 2). Further, appellants do not identify any action taken by the Forest Service (or BLM), based on the stipulations or otherwise, to preclude such access.

Appellants note that, immediately prior to the FRA's September 1992 order to plug and abandon the Cido No. 2 well, they were precluded from commencing any operations on that well due to cold conditions and heavy rainfall that continued from the spring thaw until mid-August (SOR at 6). If appellants were prevented from meeting their statutory obligations, they could have sought a suspension of operations or production on the basis that, despite the exercise of due care and diligence, such activity was prevented by force majeure, i.e., matters beyond the lessee's reasonable control. See 43 CFR 3103.4-2(a); F. M. Tully, 132 IBLA 1, 2, 5 (1995); NevDak Oil & Exploration, Inc., 104 IBLA 133, 139 (1988). They did not do so, and thus cannot excuse their failure to commence diligent reworking or drilling operations in response to the FRA's June 16, 1992, letter.

Appellants further contend that reversing BLM's determination that their lease terminated by operation of law, thus permitting them another opportunity to initiate paying production therefrom, is consistent with the Department's policy to avoid the termination of oil and gas leases containing economically marginal or "stripper" wells by suspending production, pursuant to 43 CFR 3103.4-2(a) (SOR at 5, 8). BLM did have a policy in

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6/ Appellants had more than ample notice, starting with the FRA's Apr. 20, 1989, letter that BLM did not consider the Cido No. 2 well capable of paying production. The Nov. 7, 1989, State Office decision, the Mar. 15, 1990, State Office letter, the July 2, 1990, State Office decision, and the FRA's July 16 and Dec. 5, 1990, letters all at least implicitly notified them of this fact.

place favoring liberal granting of suspensions for stripper wells where
not doing so would lead to premature abandonment of the lease and the loss of recoverable oil reserves. See Prima Exploration, Inc., 102 IBLA 352, 353 (1988); Instruction Memorandum (IM) 86-409 dated Apr. 22, 1986, at 2; IM 86-508, dated June 6, 1986, at 1. However, the policy was not self-operative; BLM had to grant a suspension of the obligation to maintain production from the lease.

Appellants note that they requested a suspension of production pursuant to the Department's stripper well policy, but that BLM twice returned their application on February 11, 1987, and May 18, 1988, because required information had not been submitted (SOR at 3; Exh. 5). Appellants took
no appeal from either BLM action, but instead admittedly abandoned their effort to gain a suspension (SOR at 3). Since the time for appeal has long since passed, the Board lacks jurisdiction now to review the propriety of either action. See Turner Brothers Inc. v. Office of Surface Mining Reclamation & Enforcement, 102 IBLA 111, 121 (1988). Moreover, the propriety of BLM's actions in 1987 and 1988 is irrelevant to whether appellants were entitled to a suspension in the circumstances present after the cessation of production in October 1991, or following receipt of the FRA's June 16, 1992, letter.

In the absence of a suspension of production, we must affirm BLM's holding that appellants' lease terminated by operation of law because the lessees failed to commence reworking or drilling operations within 60 days of receipt of notice from BLM. See Max Barash, 6 IBLA 179, 183 (1972); Steelco Drilling Corp., 64 I.D. 214, 220-21 (1957).

Appellants further assert that BLM's delay in acting on their suspension application "delayed any type of activity [on] the Lease" (SOR at 3). Appellants and their immediate predecessor-in-interest were not precluded, during the period of time that BLM was processing the suspension application, from drilling and attempting to obtain paying production from the lease. Moreover, they could not count on BLM's approval of the application, and thus were required to take all alternative steps to preserve the lease. Until BLM approved the application, appellants and their immediate predecessor-in-interest (as the lessees) were obligated to initiate paying production from one of the existing wells or a new well. They did not do so.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

David L. Hughes
Administrative Judge

ADMINISTRATIVE JUDGE IRWIN CONCURRING IN THE RESULT:

In my view, this lease terminated effective October 31, 1987. The Bureau of Land Management (BLM) advised BUSRx, Inc. (BUSRx) that its April 4, 1990, order to plug the No. 2 Cido well was subject to administrative review in accordance with 43 CFR 3165.3. That regulation provides that review must be sought within 20 business days of the date such an order is received. The record shows BUSRx received the April 4 order on April 13, 1990. Its request for State Director review was not received by BLM until May 18, 1990, however, 25 business days after it received the order.

We have held BLM properly dismisses or denies a request for State Director review that is not filed within 20 business days of receipt of BLM's order, Han-San, Inc., 113 IBLA 361, 362 (1990); Global Natural Resources Corp., 121 IBLA 286, 289 (1991). Thus, the BLM State Office did not have jurisdiction to reinstate the lease on September 30, 1990, in response to BUSRx's request for review. See Conley P. Smith Oil Producers, 131 IBLA 313, 320 (1994). Therefore, the lease terminated effective October 31, 1987, as BLM stated in its November 7, 1989, decision.

Will A. Irwin
Administrative Judge